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U.S. Secretary of Labor

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

R. ALEXANDER ACOSTA, Secretary of the
United States Department of Labor,¹

Plaintiff,

v.

LAWRENCE J. MAZZOLA, ET AL.,

Defendants.

Civil Case No. C04-04949 PJH

**JOINT STIPULATION TO MODIFY
CONSENT ORDER AND ~~PROPOSED~~
ORDER**

¹ This action was commenced and settled in the name of Elaine L. Chao, former Secretary of the U.S. Department of Labor. On April 28, 2017, R. Alexander Acosta became the Secretary. Therefore, Mr. Acosta is being automatically substituted for Ms. Chao as the Plaintiff, pursuant to Federal Rule of Civil Procedure 25(d). The caption of this action is amended accordingly.

1 Plaintiff R. Alexander Acosta, Secretary of the United States Department of Labor
 2 (“Plaintiff” or “Secretary”) and Defendants Lawrence J. Mazzola; Lawrence Mazzola, Jr.;
 3 William B. Fazande; Larry Lee; James R. Shugrue; Vohon J. Kazarian; Tom Irvine; Robert E.
 4 Buckley; Robert Buckley, Jr.; Art Rud; Ron Fahy; Robert Nurisso; Frank Sullivan; U.A. Local 38
 5 Pension Trust Fund; U.A. Local 38 Health & Welfare Trust Fund; U.A. Local 38 Apprentice &
 6 Journeyman Training Trust Fund; U.A. Local 38 Scholarship Trust Fund; U.A. Local 38 Vacation
 7 and Holiday Trust Fund; U.A. Local 38 Convalescent Trust Fund and Richard L. Milsner
 8 (collectively, “Defendants”) hereby stipulate and agree as follows:

9 RECITALS

10 1. This Court entered a Consent Order on August 17, 2007 in the matter of Elaine L.
 11 Chao v. Lawrence J. Mazzola, et al., USDC N.D. Cal., Case No. C04-04949 PJH (the “Consent
 12 Order”). As indicated in footnote 1, the current Secretary of Labor, R. Alexander Acosta, is
 13 automatically substituted for former Secretary of Labor, Elaine L. Chao.

14 2. On February 26, 2018, Defendants filed a Motion to Modify Consent Decree (the
 15 “Motion”).

16 3. At the time the Consent Order was entered into in 2007, the U.A. Local 38 Union
 17 had a \$6 million (six million dollar) outstanding loan (“Local 38 Loan”) to the Convalescent
 18 Trust Fund which owns the Konocti Harbor Resort & Spa (“Konocti Harbor”).

19 4. In recognition of the Local 38 Loan, the Consent Order provides that the first
 20 \$4 million (four million dollars) in proceeds from any sale of the Konocti Harbor go toward
 21 paying off the Local 38 Loan. The U.A. Local 38 Defined Benefit Pension Plan (“Pension Plan”)
 22 then receives the next \$6 million (six million dollars) in proceeds from a sale of Konocti Harbor.

23 5. The Motion states that since the time the Consent Order was entered by the Court,
 24 the Local 38 Loan has been fully repaid. As a result, all of the proceeds from any sale of Konocti
 25 Harbor should rightfully flow to the Pension Plan. However, under the terms of the Consent
 26 Order, not all of the sale proceeds can go to the Pension Plan.

27 6. Section V of the Consent Order, titled “Independent Fiduciary” provides at
 28 subsection G as follows:

1 In the event Konocti [Harbor] is sold, the Independent Fiduciary shall allocate and
2 distribute the proceeds from the sale as follows:

3 (1) Local 38 will receive the first \$4 million (four million dollars) owed to
4 Local 38 on the outstanding principal balance and unpaid interest on its loan, originating
5 on September 29, 2000 and as subsequently rewritten and amended through June 14,
6 2007, to the Convalescent Fund (hereinafter the "Loan"), with such outstanding principal
7 balance and unpaid interest to be calculated as of the date or dates of distribution of the
8 sales proceeds.

9 (2) The Pension Plan shall receive the next \$6 million (six million dollars).

10 (3) Local 38 and the Pension Plan shall, when the buyer pays each installment
11 of any additional sales proceeds, share any additional proceeds equally until the
12 outstanding balance on the Loan is repaid.

13 (4) After payments (1) through (3) have been made, the Pension Plan shall receive
14 the remainder of the sales proceeds.

15 7. The parties have reached an agreement regarding the modification to the Consent
16 Order, obviating the need for the Court to rule on the Motion.

17 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED among the
18 undersigned parties, that:

19 The parties request that the Court modify Article V, subsection G, by replacing the current
20 language with the following:

21 In the event Konocti is sold, the Independent Fiduciary shall allocate and distribute the
22 proceeds from the sale as follows:

23 (1) The U.A. Local 38 Defined Benefit Pension Plan shall receive all of the
24 sale proceeds.

25 (2) Within 30 days of the closing of any sale of Konocti:

26 a) WhiteStar will provide the Secretary with a copy of the completed
27 sales agreement and all associated documents detailing the sales
28 proceeds and expenses;

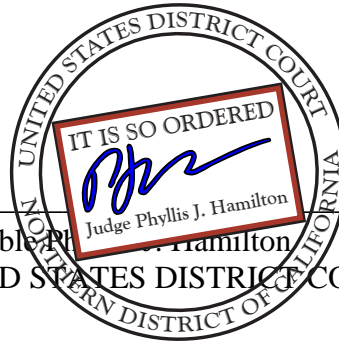
- b) WhiteStar or the Administration Office for the U.A. Local 38 Defined Benefit Pension Plan will provide a bank confirmation of the Convalescent Trust Fund's receipt of the sales proceeds (minus any expenses); and
- c) The Administration Office or the U.A. Local 38 Defined Benefit Pension Plan will provide the Secretary with a copy of the bank confirmation showing the Pension Plan's receipt of the Konocti sales proceeds.

Except as specifically provided in this Order, all other terms and conditions of the Consent Order remain unchanged and in full effect.

IT IS SO ORDERED.

Dated: March 9, 2018

Honorable Phyllis J. Hamilton
UNITED STATES DISTRICT COURT JUDGE



Respectfully submitted,

Dated: March 9, 2018

For the Secretary:

NICHOLAS C. GEALE
Acting Solicitor of Labor

G. WILLIAM SCOTT
Associate Solicitor

By: /s/ Wayne R. Berry
Wayne R. Berry

Attorneys for Plaintiff
R. ALEXANDER ACOSTA, Secretary of Labor
United States Department of Labor

///

1 Dated: March 9, 2018

BAKER & McKENZIE LLP

2 By: /s/ James P. Baker

3 James P. Baker

4 Attorneys for Defendants

5 Lawrence J. Mazzola; Lawrence Mazzola, Jr.;
6 William B. Fazande; Larry Lee; James R. Shugrue;
7 Vohon J. Kazarian; Tom Irvine; Robert E. Buckley;
8 Robert Buckley, Jr.; Art Rud; Ron Fahy; Robert
9 Nurisso; Frank Sullivan; U.A. Local 38 Pension
10 Trust Fund; U.A. Local 38 Health & Welfare Trust
11 Fund; U.A. Local 38 Apprentice & Journeyman
12 Training Trust Fund; U.A. Local 38 Scholarship
13 Trust Fund; U.A. Local 38 Vacation and Holiday
14 Trust Fund; U.A. Local 38 Convalescent Trust Fund
15 and Richard L. Milsner

12 **Signature Attestation**

13 Pursuant to Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document
14 has been obtained from each of the above signatories.
15

16 Dated: March 9, 2018

BAKER & McKENZIE LLP

17 By: /s/ James P. Baker

18 James P. Baker
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